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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,975	07/14/2003	Mark D. Soll	MER 03-009	8586

33928 7590 06/08/2009  
JUDY JARECKI-BLACK; PH.D., J.D.  
3239 SATELLITE BLVD. 3RD FLOOR  
DULUTH, GA 30096

EXAMINER
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PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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06/08/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/618,975	<b>Applicant(s)</b> SOLL ET AL.	
	<b>Examiner</b> ALTON N. PRYOR	<b>Art Unit</b> 1616	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 21 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☒ Other: See Continuation Sheet.

/Alton N. Pryor/  
 Primary Examiner, Art Unit 1616

Continuation of 13. Other: Meinke et al mentions spot-on formulations generally with no reference to any specific composition. Meinke et al do not specify compositions that can be used in a spot-on formulation. The Examiner argues that the major point here is that Meinke et al mention that their composition can be formulated into a spot-on formulation. Therefore an artisan in the filed would have been motivated to make a spot-on formulation comprising t-butyl nodulsporamide based on the teaching of Meinke et al.

It is important to note that the rejection results from a combination of Meinke et al. and Baker. Therefore, although Meinke et al may not teach the other claimed ingredients (solvent, crystallization inhibitor system, surfactant and optionally cosolvents) addition to the Meinke et al's t-butyl nodulsporamide containing formulation, the combination of Meinke et al and Baker suggest a composition comprising t-butyl nodulsporamide, solvent, crystallization inhibitor system (film forming agent plus surfactant) and optionally cosolvents. While Baker does not specifically list nodulsporamide as an ectoparasiticide used in his invention, Baker's broad teaching of ectoparasiticide makes obvious the combination of nodulsporamide, dipropylene glycol monomethyl ether (solvent,), polyvinylpyrrolidone (film forming agent), polyoxyethylated sorbitan monooleate (surfactant) and optionally cosolvents. See rejection of record.

Instant claims employ comprising language which would allow for the inclusion of the silicone and fixed oil taught by Baker.

Baker teaches a spot on formulation (0.3-5 ml) and Meinke et al teach a pour on formulation (2-60 ml). The formulations may not be the same; however, the volume of the formulations overlap at the range of 2-5 ml. Therefore, one formulation at a certain volume makes the other obvious. On page 44 starting at 3<sup>rd</sup> paragraph - page 45 line 2 of Applicants' response, the Applicants explain the unexpected results that are obtained for the instant composition comprising nodulsporamide compounds. The results appear to be mere statements by the Applicants since no showing of unexpected results has been provided to support the statements.

At this time the Obviousness type double patenting rejection will be maintained. Applicants' willingness to consider filing terminal disclaimer(s) is acknowledged.